

EDGAR C. BENNINGTON, JR.

IBLA 76-782 Decided November 10, 1976

Appeal from the decision of the Wyoming State Office of the Bureau of Land Management rejecting simultaneously-filed oil and gas lease offer W-56271.

Affirmed.

1. Notice: Generally—Oil and Gas Leases: Applications: Drawings—Oil and Gas Leases: Noncompetitive Leases— Oil and Gas Leases: Rentals

An offeror is properly disqualified from receiving a noncompetitive oil and gas lease on an offer which is drawn first from a group of simultaneously-filed offers when he fails to pay the first year's advance rental within 15 days of his receipt of notice that such rental is due, and the delay is attributable to his posting of the rental check with insufficient postage.

APPEARANCES: Edgar C. Bennington, Jr., pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Edgar C. Bennington, Jr., filed a simultaneous oil and gas lease offer in the Wyoming State Office of the Bureau of Land Management for Parcel No. 90, consisting of 719.80 acres. His drawing entry card, W-56271, was drawn first, and in accordance with regulation 43 CFR 3112.4-1 he was duly notified by certified mail that he was required to submit payment of the first year's rental (\$360) within 15 days of his receipt of the notice. The notice also informed him that under the regulation he would be automatically disqualified to receive the lease if the rental was not timely received in the Wyoming State Office within the 15-day period prescribed.

Bennington received this notice at his address in Fayetteville, North Carolina, on August 23, 1976. Payment, therefore, was due not later than September 7. It was not received in the State Office until September 9. By decision dated September 10, 1976, the Wyoming State Office held that the offer was disqualified by reason of the tardy payment, from which decision Bennington has appealed.

[1] In his statement of reasons appellant asserts that he was assured by the United States Postal Service in Fayetteville that it would take only 3 to 4 days for certified mail to be received in Cheyenne, whereupon he placed the check in an envelope, properly addressed, and sent it certified mail "return receipt requested" on August 31. The letter therefore had 8 days (counting August 31st) in which to arrive, but it was not received until it was 2 days too late. Appellant implies that the blame for the delay should fall entirely on the Postal Service.

However, the envelope in which the payment was sent is part of the record of this case. It bears a sticker indicating that it was sent "certified mail" and the certification number, as well as a stamped legend "RETURN RECEIPT REQUESTED." The envelope also bears two other stamped legends. The first, reading "RETURNED FOR POSTAGE DUE," has been scratched out with a pencil. The second, which has not been disturbed, reads, "POSTAGE DUE _____," and the figure "60" has been written into the blank. Thus, at some point it appears that the Post Office determined that 60 cents postage was unpaid. There are no postage stamps on the envelope, but a strip of paper tape from a postage meter is pasted in the upper right corner of the envelope and shows the payment of 38 cents postage. This also carries the postmark made by the postage meter and indicates that it was mailed from Fayetteville on August 31. Superimposed on the postage meter tape are the typical wavy black lines used by the Post Office to signify cancellation of postage and a second postmark also indicating that the envelope was deposited in the mail at Fayetteville on August 31. But, underneath the postage meter tape strip, handwriting is visible. When held to the light one may read what was written in the space normally reserved for the placement of postage stamps, as follows:

Check Payable	\$360.00
To Treasurer	Certified
of United	Cashiers
States	Check

This appears to be written in the same hand and the same ink as that which addressed the envelope.

The peculiarities of this mailing raise many questions which we cannot effectively resolve. Did appellant attempt to avoid the need to pay postage by noting in the upper right-hand corner that the envelope contained a check payable to the United States? Was the envelope returned to the sender after it had been mailed because of postage due? Why did the envelope arrive at its destination with only 38 cents postage having been paid, notwithstanding the Post Office notation that there was 60 cents postage due?

While these questions remain unanswered, one thing is obvious - this letter required special handling and processing by the Post Office because of the lack of sufficient postage, and this can only be attributed to appellant. Appellant makes no attempt to explain the discrepancies; indeed, he makes no reference to them at all.

The regulation makes disqualification of the offer automatic when the payment is not received when due, and the offer having the next highest priority is then entitled to consideration. There is no grace period contemplated by the regulation, nor is a tender of payment sufficient. Finally, the requirement that the payment be made timely is mandatory and cannot be excused because of the alleged delay by or inefficiency of the Postal Service. W. Duane Kennedy, 24 IBLA 152 (1976); John Paul Pratt, 24 IBLA 110 (1976); Mar-Win Development Co., 20 IBLA 383 (1975); Duncan Miller, 17 IBLA 267 (1974); Robert D. Nininger, 16 IBLA 200 (1974); aff'd Nininger v. Morton, Civ. No. 74-1246 (D.D.C., March 15, 1975).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing
Administrative Judge

We concur:

Martin Ritvo
Administrative Judge

Newton Frishberg
Chief Administrative Judge

